1950.

File No. O. Money — Lenders/50

Legal Deptt.

A BRANCH

Subject:— Opinions under the Bombay Money Lenders Act 1946

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File No. O Money-Lenders/50

Gen. 194 é.

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Office of the R.L.A.

Bombay Money-Lenders Act, 1946. Sections 18-21
Indian Companies Act, 1913. Section 134

In this case it is admitted that the Poona Investors Limited is an incorporated body and is registered under the Indian Companies Act. Merely because it is a private company and as such exempted from forwarding a copy of the balance sheet to the Registrar under section 134 would be no valid ground for refusing exemption to it from the provisions of section 18 or 21 of the Bombay Money-lenders Act. The objection taken by the Registrar of Companies is not tenable.

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Remembrancer of Legal Affairs.

U.R. to D.D. No. 2393 dated the 1st March 1950.

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Office of the R.L.A.

Bombay Money Lenders Act, 1946. Sections 2(10), 18 to 22. Indian Companies Act, 1913 Section 4.

It appears that the Bombay Parsee Association is an unincorporated body having 430 members. It has been doing money lending business and has obtained a lincence under the Bombay Moneylenders Act, 1946. The Association has requested Government to exempt it from the provisions of sections 18 to 21 of the Act. The Registrar of Companies has taken objection on the ground that this Association having membership of 430 and doing money lending business is an unlawful association for want of registration under the Indian Companies Act and consequently it is wrong to issue any licence to such a body when it is obviously an unlawful association. R.L.A. is requested to advise whether there is any legal objection to granting a licence to such a body and also to exempting it from the provisions of sections 1846- to 21 of the Bombay Moneylenders Act, 1946.

Under section 2(10) of the Bombay Money-lenders Act, 1946, even an unincorporated body of individuals carrying on business of money lending is a moneylender and is entitled to a licence under section 5. Under sub-section (1) of section 4 of the Indian Companies Act, no company, association or partnership consisting of more the an 10 persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act and under sub-section(2), no company, association or partnership consisting of more than 20 persons shall be formed for the purposes of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, etc. Under sub-section(4) any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding Rs. 1,000. It is clear from these provisions that an association consisting of More than the maximum number

of members stated above and formed for the purpose of carrying on business with a view to gain is an illegal association. An association which is illegal for want of registration under section 4(2) can have no legal recognition as a jural unit and it cannot sue or be sued as a corporate body nor can it enter into a contract as such(see Dholanath Shankardas v. Lachmi Narain 53 Allahabad 316). If the illegality of an association is ex facie apparent, it would be wrong to give any legal recognition as a jural unit by issuing a licennce under the Bombay Moneylenders Act. To harmonise section 2(10) of the Bombay Money Lenders Act with section 4 of the Indian Companies Act an unincorporated body will have to be construed as an unincorporated body which is otherwise lawful. An association, however, need not be registered if it does not carry on business with a view to gain either by the individual members or by the association as a whole (see Re, Siddal (1885) 29Ch. D.1.) It is not known whether the Bombay Parsee Association has been carrying on the business of money lending with a view to gain either by individual members or by the Association a a whole. This can be determined from the aims and obects of the Association and the provisions regarding the loans to be granted by it. If it appears from the articles of the Association that it has been carrying on the business of money lending with a view to gain, then certainly it would be an illegal associationand, as such, it cannot be given any legal recognition and no licence under the Bombay Moneylenders Act can be issued to it. If the grant of the licence to the Association is in itself illegal, the question of granting any exemption under section 22 from the provisions of sections 18to 21 of the Bombay Moneylenders Act will not arise.

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Remembrancer of Legal Affairs.

U.R. to D.D. No. 3011, dated the 2nd March 1930.

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The Bombay Money Lenders Act, 1946, Section 18, 25, 33, 34, 35—

The question raised for the R.L.A. consideration is whether a licence can be granted to a minor under the Bombay Money-lenders Act, 1946. It is true that the the Bombay Money-lenders Act, 1946, does not expressly prohibit a licence being issued to a minor but the implications of the issue of such licence would clearly indicate that no such licence can be issued. A minor is incompetent to contract under section 11 of the Indian Contract Act. It is true that a promissory note or mortgage bond executed in favour of a minor is not void and can be sued upon by him(see Mulla's contract Act, p. 69) and on a licence being issued the money transactions on promissory notes and mortgages made by him would not be in valid . But the object of the Moneylenders Act is not merely to legalise the Money lending business but to regulate that business for which purpose certain liabilities are imposed on a licensee. Under section 18(1) the licensee is required to keep accounts and furnish copies and under section 19(1) to deliver statements of accounts and copies thereof to his debtors everyx year. Under section 25 limitation on rates of interest is imposed. Section 26 prohibits him from charging for expenses on loans. Section 33 provides for penalty for molestation of debtors. Section 34 prescribes penalities for contravention of any of the provisions of the Act, etc, It is, therefore, clear that a licensee would be liable for contravention of the provisions of the Act even though he is a minor. To give a licence to a minor would afford him an opportunity to contravene the provisions of the Act and thus render himself liable to penalities- a result which is prejudicial to his own interests. As a rule, a minor is not permitted by law to do anything prejudicial to his own estate own interest(see Halsbury , vol,17,p.536).Besides,

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under section 24 a debtor can apply to the court for directing payment of decretal amount by instalments and under section 30 he can make an application for enquiry and to take accounts and to declare the amount due. In such proceedings, the licensee, if he is a minor, cannot be sued unless a guardian is appointed. These sections clearly suggest that a moneylender should be major. A minor cannot appoint a person to be responsible for the management of his business for he is incapable of making such appointment and further section 35 shows that a person can be appointed to be responsible for the management of the business of a joint family, bank, company or body and not of an individual; for the individual to whom a licence is issued is himself personally responsible for all the business he does. In the circumstance , it appears clearly irexpendient that license should be issued under the Bombay Money-lenders Act to a minor.

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Examiner of Legal Affairs.

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U.R. to D.D.S. No. 4/52, dated the 1st April 1952

Local Department.
R.I.No. 7301 dated 28th4-50.

Submitted.

Attention is invited to R.D. notifications Nos. 2770/45 (b) (P.19 ante) and 1770/45 (c)(P.19 ante) dated 17-11-47 and also to R.D. notifications bearing No. 2770/45 and dated 1-12-47(p127 ante) and 30-4-48(p.69 ante) respectively.

TheRegistrar General of Money Lenders,Bombay Province, Poona is of the opinion that with the substitution of the words "Belgaum Taluka" for the words "Belgaum City" in Govt. notification R.D. No. 2770/45(b) dated 17-11-47 the Belgaum Taluka, areas is without any Asstt. Regr. of Money Lenders. R.R.A. has been requested advise whether this view is correct.

The view taken by the registrar General of Money Lenders

A | is correct.

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R.L.A. A to be the reply

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U.R. to D.D. No. 6301 dt. 10-5-50.

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Office of the R.L.A.

Bombay Money-Lenders Act, 1946. Sections 5, 6(1)(a) & 34.

Attention is invited to R.L.A.'s opinion No. 11480 dated 1-12-1947. As stated therein no money-lender can carry on business of money lending unless and until he obtains a license. As under clause(a)of sub-section (1) of section 6, a money-lender has to state(in his application for license) " the area and the place or principal place of the business of money-lending in the Province." such money-lenders will have to open a sub-office in the area in Bombay State where the business of money-lending is carried on. The view taken by the R.D. in para 3 of office note dated 10-4-1948 is therefore correct.

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Remembrancer of Legal Affairs.

U.R. to R.D. No. 6637 dated 16th May 1950.

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L.D.R. No. 5724 dt/ 4-6-50

submitted.

2. The questions for consideration are:-

1. Whether it is necessary to prescribe new forms of summons, etc, to enforce attendence of witnesses, as forms prescribed in the Civil Procedure Code are not quite suitable for the purposes of the Bombay Money Lenders Acts, 1946.

2. Whether payment on account of travelling and subsistence allowances to witnesses should be borne by Govt. or the applicant for a licensee.

3. Whether copying and comparing fees should be charged to applicants or any other interested parties for supply of copies of documents.

As regards(1) The Registerar General is of the opinion that modifications will have to be approvied by H.C. As regards (2), he thinks that when witnesses are examined on behalf of the money lender, the he should bear the expenses on account of allowances, etc., but if witnesses are examined by the Asstt. Registrar or Registrar suo moto, Govt. will have to bear the expenses on their account.

As regards(3), the Registrar General is of the opinion that the provisions of theC.P.C. should apply in preference to those of the L.R.C. and that such feees should be charged in accordance with Chapter XIII of civil Manual issued by the High court for the guidance of the Civil courts.

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R.L.A.
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Office of the R.L.A.

Bombay Money Lenders Act, 1946. Sec. 39(2)(g).

The view taken by the Registrar of Money-lenders, Bombay, on the question of the expenses on account of allowance etc., of witnesses is correct.

2. As regards the question of making suitable adaptation s in the forms of summonses and prescribing copying fees, such adaptations and the table of fees may be got incorporated in the form of rules to be made under clause (g) of sub-section(2) of section 39 of the Bombay Money Lenders Act, 1946. The draft of the rules may be got settled in consultation with the Legal Department.

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Remembrancer of Legal Affairs.

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U.R. to D.D. (through R.D.) No. 6766 dated 18th May 1950.

Bombay Money Lenders Act. 1946 Sect. 22.
Indian Companies Act. Sect. 4(2).

The sole question for consideration is whether the Bombay Parsi Association, not being registered under any Act, is hit by section 4(2) of the Indian Companies Act. That provision was considered in Bhikhabhai Co. v. Rustomji (30 Bom. L.R. 408) where at pages 423-24, Justice Rangnekar observed:-

"Under sub-section(2) of section 4, no company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership or by individual members thereof, unless it is registered as a company under the Act, etc., Now reading the two sub-sections(1) and (2) of section of section 4 together, it is necessary that, in the first place, there should be either a company, association or partnership consisting of more than 20 persons. Secondly, such company, association or partnership must be formed for the purpose of carrying on business other than the business of banking. Thirdly, that business must have for its object the acquisition of gain either to the company, association or partnership or to the individual members thereof. The important words in the section appear to me to be 'shall be formed for the purpose of carrying on any other business', that is to say, business other than banking. These words, therefore, show that what the legislature contemplated is something which must be business in the same sense in which banking is, although impliedly described as business. This I think follows from an application of the ordinary rules of construction to the section as a whole, although, strictly speaking, as has been said, banking is not a business. As pointed out by Lord Justice Cotton in Smith, v. Anderson (1880L.R. 15,Ch.D. 247), that is the meaning of the words 'any other business' in sub-section (2)".

Lord Justice James in Crowther v. Thorley (1884 50 .T.L.S. 83) observed:

"Section 4 of the English Companies Act of 1862(which is in terms similar to section 4 of the Indian Companies Act) was intended, as it appears to me, to prevent the mischief arising from the large trading undertaking being carried on by large fluctuating bodies so that persons dealing with them did not know with whom they were contracting, and so might be put to great difficulty and expense, which was a public mischief to be repressed."

and All Sickness Association (1909 25 T.L.R. 674), it was held that business did not include the case of an association of persons who contributed

sums to be applied in relieving its members in the case of the sickness, the balance being distributable at the end of each year. In Chaklal v. Punna lal(32 Allahabad 325) it was held that the primary object of the of the association is to be looked into and no regard should be paid to the circumstances that developed later on. Applying the aforesaid tests to the present case, it would be apparent that the Bombay Parsi Association had been formed solely for the object of promoting good relations and unity amongst the parsis and to promote, social, economic, industrial, educational objects and to solve religious problems of the community and to render all possible assistance to the poor parsis. Evidently it is not an association formed for the purpose of carrying on any business, and much less for gain. It is true that the association advances small loans to the poor and needy parsis andand some interest is charged. But this would not amount to any kind of bainess whereapparently it is not intended to make any profit. The object of advancing small loans the the poor parsis is to free them from the the clutches of pathan and Marwadi money lenders and to assist them to meet the urgent needs of the family. The charging of interest is incidental to meet the expenses of the Association and to enable it to carry on its activities. In the circumstances, it does not appear to me an association contituted for the purpose of carrying on any business for gain. Consequently, the Association would not come within the prohibition contained in sec. 4(2) of the Indian Companies Act and cannot be considered to be an unlawful association. There would be no objection to granting it the exemption under section 22 of [illegible].

U.R. to D.D. No. 7700 dated 7th June 1950.

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H.R.D.
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L.D.R. No. 9305 d/- 1-6-1950

Submitted.

The question for H.L.A.'s consideration is whether there is any legal objection to exempting the H.M.V. & Columbia Staff Diwali Fund from the provisions of sections 18 to 21 of the Bombay Money Lenders Act, 1946.

The objects of the Fund are:-

(1) To encourage the staff to be thrifty and to enable them to save money.

(2) To enable the staff to secure loans at favourable rates of interest on the security of the amount contributed, salary and/or upon personal security, and

(3) To do all such other things as are incidental or conducive to the attainment of the above objects.

From the objects it is evident that the H.M.V. & Columbia Diwali Fund has not been formed for the purpose of carrying on any business, and much less for gain. No doubt loans are advanced to the members but that does not make money-lending a business of the Fund. The main object seems to be to encourage thrift so that the members can save money to celebrate Diwali. This is clear from the fact that all the loans are to be repaid before the 5th October or the third day after payment of of office salries in that that month and the sum subscribed towards the Fund together with the profits thereon are disbursed 5 days before the Diwali Holidays. This Fund is similar to the one and All Sickness Association(1909/25 T.L.R. 674), where it was held that business did not include the case of an association of persons who contributed sum

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be applied in relieving its members in case of sickness, the balance being distributable at the end of each year. Thus the H.M.V. & Columbia Diwali Fund would not come within the prohibition contained in section 4(2) of the Indian Companies Act, 1913, and need not be registered (see Re: Siddal (1885) 29 C.H.D.) Deptt. It being a lawful unincorporated body of individuals would be entitled to a license under the Bombay Money Lenders Act 1946 and there would be no objection to granting it exemption under section 22 of the Bombay Money Lenders Act, 1946(cf. R.L.A's opinions Nos. 3011 and 7700 dt/-2-3-50 and 7-6-50 respectively re; the Bombay Parsee Association).

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A.L.R.A please put up 1909, 25 T.L.R. 674 and discuss.

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Seen and returned.

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Remembrancer of Legal Affairs.

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U.R. to D.D. No. 8741 dated the 26th June 1930.

Office of the P.L.A.

2 The Remembrancer of Legal Affairs is not in favour of entrusting this work of Prosecution under the Bombay Houselessness Act, 1946, to the Public Prosecutors. For the Offence under section 23(1)which is cognizable and other incidental offences such as those under sections 174,175, 177, 180 and 204, I.P.C., the police agency will be available as agreed to by Secretary, Home Department at page 3 ante. For other noncognizable offences under the Act the Development Department may make their own arrangements by appointing officers as Public Prosecutors for conducting prosecutions under the Act.

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Remembrancer of Legal Affairs.

U.R. to D.D. No. 697 confl, dated the 12th September 1950.

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I am afraid a prosecution will not succeed. Even on the assumption that the father and the sons form an undivided Hindu family, our own records show that the father holds a separate licences, and that the sons as members of a firm were refused a license which means that there are two separate businesses. If that be so, it will be difficult to prove that what the firm of the sons is charging by way of brokerage also goes to the money-lender who is the father. "Interest" is defined in the Act to include any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan. That definition presupposes that the payment by way of interest is to be made to the persons who actually advances the loans and not to a third party. Therefore, if we contemplate a case where a money-lender requires a recommendation from a person who is inconnected with him in order to induce him to advance a loan and and that person makes a charge for underwriting the risk, the charge so made cannot be treated as interest within the meaning of the term as defined in the Act. Section 26 also will not be applicable, because the money-lender is not receiving anything from the debtor. What has happened in this case is that the money-lender requires the guarantee of a person who underwrites the risk. Any charge made for underwriting the risk would not be covered by the term "interest", and it does not seem that the Act forbids such underwriting for a charge. Name the loan, this is a clever attempt to circumvent the Act, and I would suggest that the question should be gone

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into and the law suitably amended.

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Remembrancer of Legal Affairs.

U.R. to D.D. No. 13655, dated 27th September 1950.

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Office of the R.L.A.

...mbay Money Lenders Act, 1946. S. 19(4).

The view taken by the Development Department is correct. In the absence of any definition of "year" in the Bombay Money Lenders Act, 1946 "Years" in section 19 means a year reckoned according to the British Calendar. Instead of the year being required to be calculated from 1st January to 31st December section 19(4) gives latitude to money lenders to calculate it according to his convenience say for instance from 1st April to 31st March of the following year or from 1st August to 31st July of the following year. (see forms 6 to 7 prescribed under rules 10 and 11 of the Bombay Moneylenders Rules, 1947.)

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Remembrancer of Legal Affairs.

U.R. to D.D. No. 13938 dated the 26th September 1950

Office of the R.L.A.

Indian Sale of Goods Act, 1930 Section 61
Bombay Money-Lenders Act, 1946.

The view taken in Development Department office note is correct. The interest charged in connection with the forward transactions would be by way of damages under section 61 of the Indian Sale of Goods Act and the forward business would not be money lending business under the Bombay Money-Lenders Act, 1946.

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U.R. to D.D. No. 15246, dated the 2nd Nov. 1950.

Office of the R.L.A.

Bombay Money-Lenders Act, 1946.

Although a minor cannot appoint a person to do money-lending business on his behalf, still the person appointed by the Court as guardian of such minor can do money-lending business on his behalf and there would be no legal objection to granting such guardian a license under the Bombay Money-Lenders, Act, 1946.

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Remembrancer of Legal Affairs.

U.R. to D.D. No. 16431 ,dated the 23rd November 1950.

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C.A

Office of the R.L.A.

Bombay Money Lenders Act, 1946, sec.1(3)
Provinces and States(Abscorption of Enclaves) Order, 1950, Article 8.
India &Hyderabad (Exchange of Enclaves) Order, 1950, articles 7.

The question for the consideration of the Remembrancer of le Legal Affairs is whether it is necessary to issue a notification under sub-section(3) of section 1 of the Bombay Money-lenders Act, 1946, bringing the provisions of the Act into force in the areas included in the territories of the State of Bombay by the Provinces and States(Abscorption of Enclavies) Order, 1950, and the Indian and Hyderabad (Exchange of Enclaves) orders 1950.

2. Article 8 of the Provinces and States(Abscorption of Enclaves) Orders, 1950, provides that all laws in force in an enclave immediately before 25th January ~~1950~~ 1950 (from which day the enclaves have been included in the State of Bombay)shall, as from that day, cease to be in force in the enclave, and all laws in force in the absorbing unit shall , as from that day, extend to and be in forces in, that enclave. Under the Explanation to that article the expression "law" includes inter alies any Act and any notification issued thereunder. A similar provision has been made in article 7 of the Indian and Dydorabad(Exchange of Enclaves) Order, 1950. It is obvious from these provisions that the Acts inforce in the State of Bombay, along with the notifications issued under them have been brought into force in the villages transferred to the State of Bombay by the two Enclaves Orders. All the villages so transferred now form part of the various districts specified in colum column 1 of G.N. ,P.D. S.D. No. 2755/46-F.1 dated 25th January 1950 where presumably the Bombay Money-lenders Act, 1946, has been will-brought into force. If that presumption be correct, it would be necessary to ~~also~~ issue notification under sub-section(3) of section 1 of that Act only so far as the areas Transferred by the two Enclaves Orders are concerned(vide R.L.A.'s opinions Nos 6869 dated 28-9-1950 and 7468 dated 2-6-1950, which have been based upon section 3(3)(b) of the Bombay Merged States(Laws) Act, 1950, which makes provision similar to articles 7 and 8 of the two Enclaves Orders).

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Remembrancer of Legal Affairs.

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U.O. to Development Department No.15335, dated 2nd November 1950